IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.1148 OF 2004

IN

SUIT NO.1120 OF 2004

...

Ramulu G. Pitla & ors. ...Plaintiffs

v/s.

Smt.Chinubai G. Pitla & Ors. ...Defendants

...

Mr.Shukla i/b G.H. Shukla & Co. for the Plaintiffs.

None for the Defendants.

...

**CORAM: D.K.DESHMUKH, J.**

**DATED:** 3RD FEBRUARY,2005

**P.C.:**

1. This Notice of Motion is taken out by the Plaintiffs. Plaintiffs are married son and daughther of the deceased Gangaram Pitla. Admittedly he was the tenant of the original premises, in lieu of which the present suit premises have been given by MHADA. At the time of his death admittedly the Defendant No.1 was residing with him. The Plaintiffs have stated in paragraph 2 of the affidavit that Defendant No.1 was not legally wedded wife of the deceased. However, the deceased was having realtionship with the Defendant No.1 and therefore the Plaintiffs who are the children of the deceased were treating the Defendant No.1 as their step-mother. Defendant No.1 also states in her affidavit in reply that she was residing with the deceased at the time of his death as also before his death as a member of his family. The statement of the Defendant No.1 that she was residing with the deceased as a member of his family is obviously supported by the statement made by the Plaintiffs that the Plaintiffs are also treating the Defendant No.1 as their step-mother. As at the time

of death of the deceased in the premises, which was held by the deceased as a tenant, the Defendant No.1 was residing with him as a member of his family obviously in terms of provisions of Section 5 (11)(c)(i) of the Bombay Rent Act, it is the Defendant No.1, as the member of the family of the deceased, who would inherit the tenancy, and therefore, would become the sole tenant of the tenanted premises. Therefore, when the premises were taken over by MHADA, it was the Defendant No.1 who was holding the premises as sole tenant and therefore she alone would be entitled to the suit premises which have been given by MHADA in lieu of the tenanted premises. It, thus, appears that the Plaintiffs, prima facie, would not have any interest in the suit premises. Therefore, the Plaintiffs are not entitled to any interim relief in their favour.

Notice of Motion is, therefore, disposed of.

Ad-interim order, if any, operating in favour of the Plaintiffs will be vacated.

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